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IN THE

Supreme Court of the United States

TERM.

No. 928

CUTLER MAIL CHUTE COMPANY,
Petitioner, Plaintiff and Appellee below,

against

CAPITOL MAIL CHUTE CORPORATION,
Respondent, Defendant and Appellant below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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New York, N. Y.,
for Petitioner.

SUPREME PRINTING COMPANY, LAW PRINTERS, BARCLAY 7-0349

TABLE OF CONTENTS.

	PAGE
PETITION FOR CERTIORARI	1
Summary Statement of Matter Involved	1
This Court Has Jurisdiction to Review the Judgment in Question	2
Questions Presented	3
Reasons for Granting Writ	3
Prayer	4
Brief In Support of Petition	5
In Support of Jurisdiction	5
I. There were no concurrent findings by the courts below as to the claims in issue	5
II. There is no possibility of obtaining a conflicting decision in a court of another appellate jurisdiction	7
III. Section 240a (U. S. C. 28, sec. 347)	8
In Support of Reasons	9
1. The findings of fact should have been considered as unassailable under R. C. P. 52	9
2. *Ex post facto* wisdom obtained from a patent cannot be used to reconstruct a prior art structure	11
3. The claims in suit are distinct combination claims and the Court of Appeals should have applied the law applicable thereto as did the District Court	12

Cases Cited.

	PAGE
Adamson v. Gilliland, 242 U. S. 350	10
Altoona Pub. Theatres v. Am. Tri-Ergon Corp., 249 U. S. 477	2, 7
Anderson v. Collins, 122 Fed. 451	14
Anglo-California Natl. Bank v. Lazard, 106 F. (2) 693	10
Diamond Rubber Co. v. Consolidated Rubber Tire Co., 220 U. S. 428	14
Ensten v. Simon A. Co., 282 U. S. 45	7
Fuller v. Yentzer, 94 U. S. 288	14, 15
Galvin Mfg. Co. v. Emerson, 19 F. (2) 885	14
General Elec. Co. v. Maytag, 100 F. (2) 218	14
Gould v. Rees, 15 Wall., 187	14
Guilford Construction Co., *et al.* v. Biggs, 102 F. (2) 46	10
Hailes v. Van Wormer, 20 Wall., 353	13, 16
Hartman F. & C. Co. v. Banning, 59 F. (2) 29	14, 15
Ide v. Trorlicht, Duncker & Renard Carpet Co., 115 Fed. 137	14
Iron Fireman Mfg. Co. v. Industrial Engineering Corp., 89 F. (2) 904	15
Kinloch Telephone Co. v. Western Electric Co., 113 Fed. 659	14
Leeds & Catlin Co. v. Victor Talking Machine Co., 213 U. S. 301	14
Malloy v. New York Life Ins. Co., 103 F. (2) 439	10
Minneapolis, St. Paul & S. S. M. Ry. Co. v. Barnett & Rec. Co., 257 Fed. 302	14
National Hollow B. B. Co. v. Interchangeable B. B. Co. 106 Fed. 693	14
New York Scaffolding Co. v. Whitney, 224 Fed. 542	14, 15
Naylor v. Aslop Process Co., 168 Fed. 911	11

PAGE

Ottumwa Box Car L. Co. v. Christy Box Car L. Co., 215 Fed. 362 14
Palmer v. Corning, 156 U. S. 342 14
Parkes v. Booth, 102 U. S. 96 13
Pickering v. McCullough, 104 U. S. 310 13
Rafractolite Corp., *et al.* v. Prismo Holding Corp., *et al.*, C. C. A. 2, decided Feb. 24, 1941 11
Reckendorfer v. Faber, 92 U. S. 347 13
Sachs v. Hartford Elec. Supply Co., 47 F. (2) 743 15
Safway Scaffolding Co. v. Patent Scaffold Co., 110 F. (2) 1008 15
Schriber-Schroth Co. v. Cleveland Trust Co., 305 U. S. 47 ..... 2, 8
Seymour v. Osborne, 11 Wall., 516 ..... 13, 14
Stearns Roger Mfg. Co. v. Ruth, 62 F. (2) 442 14
Triplett v. Lowell, 297 U. S. 638 7
U. S. v. Esnault-Pelterie, 299 U. S. 201; 303 U. S. 26 10
Westinghouse Elec. & Mfg. Co. v. Condit Elec. & Mfg. Co., 167 Fed. 546 15
Westinghouse Elec. & Mfg. Co. v. Cutter Elec. & Mfg. Co., 143 Fed. 966 15
Westinghouse Elec. & Mfg. Co. v. Cutter Elec. & Mfg. Co., 169 Fed. 634 15
Young Radiator Co. v. Modine Mfg. Co., 55 F. (2) 545 15

Rules and Statute Cited.

Rule 52, Rules of Civil Procedure 3, 9
Rule 52a, Rules of Civil Procedure 9
Rule 52b, Rules of Civil Procedure 2
Section 240a, Judicial Code, 28 U. S. C. 347 ..... 2, 8
Curtis on Patents, p. 118, Sec. 111a, fourth edition 13

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TERM.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Cutler Mail Chute Company, prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit to review a judgment of that Court (entered March 10, 1941) in the above entitled cause as to a decision of the Court of Appeals of the Second Circuit, reversing the judgment of the U. S. District Court of the Eastern District of New York.

Summary Statement of the Matter Involved.

This is a patent infringement suit filed, April 28, 1939, and tried and decided subsequent to the adoption of the new Rules of Civil Procedure.

The District Court held all of the claims of the patent to be valid and infringed on February 5, 1940. (31 F. Supp. 954 and herein, Tr. pp. 216-239.)

Findings of Fact were then submitted, and having been approved by the Court, were entered on March 5, 1940 (Tr. pp. 240-259). No motion to amend these Findings of Fact, or to make additional Findings, was made by the Defendant under Rule 52 (b), whereupon the original Findings form the basis for the judgment (Tr. p. 260) entered upon the same. Nor were the Findings excepted to by the Defendant at any time.

The Court of Appeals did not hold that any of these Findings of Fact were "clearly erroneous". It reversed the judgment on March 10, 1941, without reference to the findings of the District Court.

The filing date of this petition is ~~March 31~~ April 7, 1941.

This Court Has Jurisdiction to Review the Judgment in Question.

I.

There were no concurrent findings by the Courts below. (*Altoona Pub. Theatres* v. *Am. Tri-Ergon Corp.*, 294 U. S. 477.)

II.

There is no possibility of obtaining a conflicting decision in a Court of another appellate jurisdiction. (*Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 49.)

III.

There is jurisdiction by this Court under Section 240a of the Judicial Code, 28 U. S. C. 347 as amended.

Questions Presented:

1.

Are Findings of Fact of the District Court under R. C. P. 52 to be treated by the Court of Appeals in an equity case as unassailable unless "clearly erroneous"?

2.

Is a prior art patent to be taken *as it is,* or may it be reconstructed by a court in the light of the teachings of the patent in suit and then used to defeat the patent in suit?

3.

Does a combination of old elements to be a combination in point of law require that a new result be produced by the co-action of such elements, or is it sufficient for validity that such elements co-acting together produce an old result in a more "facile, economical and efficient manner?"

Reasons for Granting the Writ.

1.

There should have been a concurrence by the Court of Appeals in the Findings of Fact of the District Court since unless held "clearly erroneous", they are unassailable under the new Rules of Civil Procedure (Rule 52).

2.

There was a reconstruction of the earlier prior art patent by the Court of Appeals in the light of the patent in suit, upon which reconstructed device, the conclusion of invalidity followed. In so reconstructing the prior art not designed nor intended for the same pur-

pose, it decided the case in conflict with applicable decisions of this Court. The District Court, however, considered the prior patent *as it is, i. e.,* unchanged, and found that the prior patent had nothing to do with the invention set forth in the claims in suit, and in so doing followed the applicable decisions.

3.

There was a failure by the Court of Appeals to apply the law of combinations to the claims in suit, which are distinctly combination claims. The District Court, however, did apply the law of combinations and found that the claimed combinations were not present in the prior art.

There are many cases of this Court declaring what a combination *is not.* There is confusion in the Courts of Appeals (Seventh and Eighth) as to what is required to sustain a combination. The Second Circuit is none too clear at present. The case at bar sharply embodies this important point in patent law and is peculiarly fitted to enable this Court to clarify and set at rest the confusion which now exists.

4.

The principles at issue are of national importance, and the judgment of the Court of Appeals is probably in conflict with the applicable decisions of this Court.

WHEREFORE, your petitioner prays that a writ of Certiorari to the United States Circuit Court of Appeals of the Second Circuit be granted.

March 25, 1941.

CUTLER MAIL CHUTE COMPANY,

By G. A. BRIDGMAN,
President.